

1           In that order, that's the decision with  
2 the FCC determined that ISP-bound traffic was  
3 interstate in nature, and that was in--and again,  
4 that was an order that was issued in February of  
5 1999.

6           My question is, do you recall whether  
7 there was any contract language, Interconnection  
8 Agreement language, between AT&T and Verizon that  
9 may have implemented that order?

10           MR. PITTERLE: No, I'm not aware. I was  
11 not working with AT&T negotiations at that time, or  
12 have not been since.

13           MR. McRAE: So, you do not know whether  
14 there is any--there were any contract amendments on  
15 that point?

16           MR. PITTERLE: I do not.

17           MR. McRAE: Would you agree, subject to  
18 check, that there was no contract implementation  
19 language that was negotiated on that point?

20           MR. OATES: I object. That's been asked  
21 and answered. He doesn't know.

22           MR. McRAE: I'm just asking, subject to

1 check.

2 MR. PITTERLE: First of all, I'm not the  
3 AT&T negotiator, so I would have to go back and  
4 be--something that my attorney would be willing to  
5 offer. But I'm not involved in those negotiations,  
6 and really would be going to a bunch of people to  
7 try to figure out what happened.

8 MR. McRAE: Okay. Thank you. That's all  
9 I have.

10 MR. DYGERT: Mr. McRae, is that all the  
11 questioning you have for Mr. Pitterle on the entire  
12 intercarrier compensation panel?

13 MR. McRAE: We are trying to figure out  
14 how we are going to address the rest of the  
15 questions. AT&T may still have some additional  
16 questions, if we could have just a moment.

17 MR. DYGERT: Okay.

18 MS. SCHMIDT: If it would be acceptable, I  
19 would prefer that Mr. Harrington proceed with his  
20 questions, and--for both of the issues, the ISP  
21 issue and the virtual NXX issue, and AT&T would  
22 finish up with some questions on the FX issue after

1 Mr. Harrington has completed his cross.

2 MR. DYGERT: All right.

3 CROSS-EXAMINATION

4 MR. HARRINGTON: Good afternoon.

5 MR. PITTERLE: Good afternoon.

6 MR. HARRINGTON: I would like to start  
7 with the audit provision proposed by Verizon for  
8 reciprocal compensation or ISP-bound traffic, and  
9 that is Section 5.7.8 on my copy of the JDPL that  
10 appears on page 34. I'm noticing people's page  
11 numbers seem to vary a little bit.

12 MR. PITTERLE: I have it blank in my page.

13 MR. HARRINGTON: Can you find it in your  
14 JDPL?

15 MR. PITTERLE: Are you referring to the  
16 amendment?

17 MR. HARRINGTON: No, I'm referring to the  
18 Verizon proposal.

19 MR. PITTERLE: Okay. Let me try again.  
20 Page 34?

21 MR. HARRINGTON: On mine.

22 MR. PITTERLE: And the paragraph?

1 MR. HARRINGTON: 5.7.8.

2 MS. PREISS: It's on the bottom of page 33  
3 of mine, if it helps.

4 MR. PITTERLE: Thank you. That worked for  
5 me, too.

6 MR. HARRINGTON: It appears that our  
7 printers are somewhat different than everyone  
8 else's.

9 Under this provision, which parties have  
10 the right to an audit?

11 MR. PITTERLE: Verizon.

12 MR. HARRINGTON: So Cox doesn't, under  
13 this provision?

14 MR. PITTERLE: It does not appear that way  
15 to me.

16 MR. HARRINGTON: Can you conceive of a  
17 circumstance under which Cox might wish to conduct  
18 an audit under this provision?

19 MR. PITTERLE: I'm sure that's possible,  
20 yes.

21 MR. HARRINGTON: For instance, if Cox were  
22 concerned that Verizon were characterizing too much

1 traffic as transit traffic or underreporting in  
2 some way the amount of traffic that was otherwise  
3 subject to reciprocal compensation, couldn't that  
4 trigger a Cox interest in doing an audit?

5 MR. PITTERLE: I'm certain that Cox would  
6 feel they have that right, yes.

7 MR. HARRINGTON: But the provision doesn't  
8 give it, does it?

9 MR. PITTERLE: No, I'm sure if this was  
10 accepted by Cox and they wanted to apply that, they  
11 might try to find it somewhere else, such as in  
12 reservation-of-rights language or something. But  
13 to answer your question directly, it's not in here.

14 MR. HARRINGTON: As it happens, there is  
15 another audit provision, and I would like to turn  
16 to that. I have distributed a page that contains  
17 Section 5.7.5. I will note that the same language  
18 is also included in Verizon's proposal page 32 for  
19 most of you in the JDPL.

20 MR. PITTERLE: Excuse me, this is the  
21 current contract that Verizon has with--

22 MR. HARRINGTON: This is the proposed

1 contract.

2           And as I discussed earlier, the language  
3 that appears in regular text is language that has  
4 been agreed to between the parties.

5           MR. PITTERLE: Okay.

6           MR. HARRINGTON: As I just said a moment  
7 ago, this particular language is identical to  
8 Verizon's proposal contained in the JDPL as well,  
9 so I don't think there is any question that this is  
10 language that Verizon has accepted.

11          MR. PITTERLE: That's fine.

12          MR. HARRINGTON: Is there anything in  
13 5.7.5 that would prevent Verizon from conducting  
14 the kinds of audits that it would be able to  
15 conduct under 5.7.8?

16          MR. PITTERLE: I would say this is  
17 focusing primarily on audit rights for rates, and  
18 the language you had pointed me to earlier was  
19 dealing with traffic billed as reciprocal  
20 compensation traffic to determine whether such  
21 traffic is reciprocal compensation and thus  
22 eligible for reciprocal compensation.

1           So, I would think that this is an  
2 additional--this being paragraph 5.7.8 in the JDPL  
3 you referred me to is really an additional aspect  
4 above and beyond the language of the audit  
5 responsibilities under 5.7.5.

6           MR. HARRINGTON: Do you see the language  
7 in the second line of 5.7.5 that refers to the  
8 audits being conducted to ensure that rates are  
9 being applied appropriately?

10          MR. PITTERLE: Yes, I do.

11          MR. HARRINGTON: And am I understanding  
12 your testimony to be that you don't believe this  
13 language would be sufficient to allow Verizon to  
14 determine whether the reciprocal compensation rate  
15 should be applied or the Internet-bound traffic  
16 rate should be applied?

17          MR. PITTERLE: I do believe that we do not  
18 feel it would be sufficient.

19          MS. PREISS: Would you speak up a little  
20 bit? We are having trouble hearing you.

21          MR. PITTERLE: I said I do believe--I  
22 would like you to ask me the question again,

1 please.

2 MR. HARRINGTON: Sure.

3 Looking at the language that says that in  
4 5.7.5 the agreed-to provision that says that each  
5 party may conduct audits to ensure that rates are  
6 being applied appropriately, is it Verizon's  
7 position that that language does not permit Verizon  
8 to conduct an audit to determine whether the  
9 reciprocal compensation rate or some other rate  
10 should apply to traffic?

11 MR. PITTERLE: I believe what paragraph  
12 5.7.8 in the JDPL is trying to do is give audit  
13 rights to look at the data that goes into traffic  
14 factor development and whether it's sufficient for  
15 traffic factors, and not whether the rates are  
16 accurate or whether they're being properly applied.  
17 So, I view this as an additional item or additional  
18 focus point that's new because of the ISP order in  
19 the three-to-one provisions.

20 MR. HARRINGTON: In other words, the  
21 language in 5.7.8 that says that Verizon may  
22 conduct audits of the traffic billed as reciprocal



1 compensation traffic to determine whether such  
2 traffic is reciprocal compensation traffic and  
3 therefore subject to reciprocal compensation, in  
4 your view, has nothing to do with the correct rates  
5 to be applied to that traffic?

6 MR. PITTERLE: Well, it says beyond that,  
7 if any such traffic is determined not to be  
8 reciprocal compensation traffic, we should not pay  
9 reciprocal compensation for that portion. That  
10 could include traffic above three-to-one, it's  
11 above the cap--that is, ISP-bound traffic that has  
12 zero additional compensation--or could be at the  
13 FCC capped rate.

14 MR. HARRINGTON: Oh, okay. So, the  
15 decision about whether it's reciprocal compensation  
16 traffic and subject to the reciprocal compensation  
17 rate and whether it's above the cap as a  
18 for-instance and subject to zero is not a rate  
19 decision?

20 MR. PITTERLE: That part of it is a rate  
21 decision, but the data, the traffic data, to  
22 compare for the three-to-one factor is not

1 rate-specific.

2 MR. HARRINGTON: I would like you to look  
3 at 5.7.5, the last sentence, and please read it out  
4 loud.

5 MR. PITTERLE: (Reading) Each party agrees  
6 to provide the necessary traffic data in  
7 conjunction with any such audit in a timely manner.

8 MR. HARRINGTON: So, under the 5.7.5, you  
9 could get any traffic data you need to conduct the  
10 audit and see if the correct rates are being  
11 applied to particular traffic; isn't that correct?

12 MR. PITTERLE: I believe what Verizon was  
13 trying to do in its 5.7.8 was to ensure that it had  
14 the ability to get the proper data as it related to  
15 the new three-to-one factor, and that's why it  
16 added that paragraph, and felt that this was more  
17 traditional language dealing with whether traffic  
18 is being billed properly as accessed traffic or  
19 local traffic or whether there was more minutes  
20 involved in that transaction than not.

21 I think that was the intent. Now, we may  
22 not have an agreement on that point, but I'm trying

1 to explain the intent.

2           To answer your question directly, does  
3 that Section 5.7.5 properly take care of that?  
4 It's an interpretation, and apparently Verizon, in  
5 inserting this language, its interpretation was  
6 that it didn't go far enough.

7           MR. HARRINGTON: What language would you  
8 add to 5.7.5 to make it go far enough?

9           MR. PITTERLE: I would be hesitant  
10 without--usually what I do when I propose language,  
11 run it past my attorneys. I think that's something  
12 we could do as part of a negotiation process that  
13 we do, and be willing to look into those types of  
14 possibilities.

15           MR. HARRINGTON: One more question about  
16 the audits.

17           Under the Commission's rules as adopted in  
18 that order--actually, there will be two more  
19 questions--doesn't Verizon have the right to go to  
20 the state if it thinks that there is a problem with  
21 the traffic, regardless of any audit provision in  
22 any contract?

1 MR. PITTERLE: I believe Verizon does have  
2 that right, yes.

3 MR. HARRINGTON: I would like to move to  
4 the Verizon contention that the order is  
5 self-effectuating. I will start with a question  
6 actually relating to the audit provision, which is  
7 why I said I had the second question.

8 If, in fact, the order is  
9 self-effectuating, why does Verizon need a separate  
10 audit provision?

11 MR. PITTERLE: I'm not familiar with every  
12 paragraph of the FCC order to answer that, but the  
13 FCC order may or may not have sufficient language  
14 in it, from Verizon's perspective, to deal with  
15 that audit provision, along the terms that I  
16 explained.

17 MR. HARRINGTON: All right. Now, are you  
18 aware generally of the conflicts over the last four  
19 and a half years concerning compensation for  
20 ISP-bound traffic?

21 MR. PITTERLE: I have been aware of that  
22 over the last--I don't think it's been four and a

1 half years from my standpoint. A certain period of  
2 time.

3 MR. HARRINGTON: I thought you might be.

4 Is it your experience that Verizon and  
5 CLECs tend to agree or disagree on these issues?

6 MR. PITTERLE: Some CLECs we seem to be  
7 able to reach agreement, and with others we don't.

8 MR. HARRINGTON: Is it fair to say that  
9 when disagreements have occurred, they have been  
10 substantial?

11 MR. PITTERLE: In what terms?

12 MR. HARRINGTON: They take a long time to  
13 resolve, if they get resolved at all.

14 MR. PITTERLE: Usually, what I have seen  
15 in my experience is that the CLECs that disagreed  
16 with us exercise the same rights you asked me about  
17 earlier and go to the Commission, and the  
18 Commission acts within its specific time frame. If  
19 they failed to take advantage of those rights, then  
20 it could drag on.

21 MR. HARRINGTON: Are you aware that Cox  
22 had to file a complaint against Verizon in Virginia

1 to enforce its reciprocal compensation rates under  
2 its current agreement?

3 MR. PITTERLE: Vaguely, yes, I'm somewhat  
4 aware.

5 MR. HARRINGTON: In that context, wouldn't  
6 it make sense to detail the reciprocal compensation  
7 provisions and the ISP-bound traffic provisions as  
8 much as you can so as to minimize the amount of  
9 controversy?

10 MR. PITTERLE: I'm not opposed to  
11 minimizing controversy. Sitting up here right now,  
12 that would seem like a great idea. But I do think  
13 that you can create controversy by trying to  
14 minimize controversy. And as experienced in the  
15 cross-examination earlier this morning, I think  
16 it's become evident that controversy can be  
17 created, and even in trying to, in maybe good  
18 intentions, to prevent future disputes.

19 I think what's more effective is to look  
20 at the details, the finite details, and get the  
21 proper people together that deal with those day in  
22 and day out, and try to work out solutions.

1 Verizon is not opposed to that. It's a negotiation  
2 responsibility. And under that view, you can get  
3 those issues resolved that way versus what we  
4 experienced here this morning with various parts of  
5 the proposals not being in line with the order.

6 MR. HARRINGTON: Are you saying that that  
7 process has worked well so far for reciprocal  
8 compensation?

9 MR. PITTERLE: I think we are in a new  
10 environment for reciprocal compensation right now  
11 under the ISP order.

12 MR. HARRINGTON: In the old order, did it  
13 work well?

14 MR. PITTERLE: I can refer to one specific  
15 thing in the old environment that didn't work well,  
16 and that was because the technology had not  
17 developed yet, and that is the entire Internet  
18 traffic issue when the 1996 contracts were  
19 negotiated. So, there was no detail that could  
20 have been put in the contract at that point because  
21 I don't think any of the parties anticipated what  
22 the Internet was going to become.

1 MR. HARRINGTON: But when you know a  
2 detail you can put in, it's a good idea to do so,  
3 isn't it?

4 MR. PITTERLE: You could put in detail  
5 that is consistent with applicable law. That's a  
6 good idea.

7 MR. HARRINGTON: Great. Let's move on to  
8 some of those details.

9 You got in front of you copies of some  
10 excerpts of the Commission's April 27th order. Can  
11 you pull those out, please.

12 MR. PITTERLE: I have them.

13 MR. HARRINGTON: I would like you to take  
14 a look at paragraph 78, which is on page 37 of that  
15 order.

16 I will note for the record that this is  
17 not the official FCC version of the order, but I  
18 believe the text is accurate.

19 In the first three sentences of that  
20 paragraph, certain rate terms are described. Are  
21 those rate caps, or are those rates?

22 MR. PITTERLE: They could be both.



1 MR. HARRINGTON: Did the Commission define  
2 them as rate caps or as rates?

3 MR. PITTERLE: The word "capped" is used  
4 here, and I'm not trying to be elusive, but I think  
5 my point is that a cap could be used.

6 MR. HARRINGTON: That would be the maximum  
7 rate permitted?

8 MR. PITTERLE: Yes.

9 MR. HARRINGTON: Any other rate beneath it  
10 would also be permitted?

11 MR. PITTERLE: I believe that the FCC  
12 order has specified that if a specific state had a  
13 previous decision prior to the effective date of  
14 this order that set a rate below the cap, then  
15 Verizon could decide whether they wanted to select  
16 that lower rate or the cap.

17 MR. HARRINGTON: Has Virginia issued such  
18 an order?

19 MR. PITTERLE: I'm not aware of any such  
20 order.

21 MR. HARRINGTON: Now, I would like to  
22 point you to a specific part of Verizon's contract

1 language, but unfortunately I'm unable to.

2           Is there some place in Verizon's contract  
3 language where it specifies specific rates to be  
4 applied to this traffic? I have not been able to  
5 find it. That's why I'm asking.

6           MR. PITTERLE: I would say it's in  
7 reference back to the specific--the references to  
8 the specific parts of the FCC order, to answer your  
9 question.

10           MR. HARRINGTON: I would like you to turn  
11 to paragraph 5.7.7, which happens to be before  
12 5.7.8, which would be in the same page of the JDPL.

13           MR. PITTERLE: Okay.

14           MR. HARRINGTON: Is this the only rate  
15 term that appears in Verizon's proposed contract  
16 language? And I will read for you the sentence I'm  
17 referring to, (reading) Notwithstanding any other  
18 provision of this agreement or any tariff, a party  
19 shall not be obligated to pay any intercarrier  
20 compensation for Internet traffic that is in excess  
21 of the intercarrier compensation for Internet  
22 traffic that such party is required to pay under

1 the FCC Internet order and other applicable FCC  
2 orders and FCC regulations.

3 I guess I should note that this language  
4 has been modified to substitute the term "measured  
5 Internet traffic" for "Internet traffic."

6 MR. PITTERLE: Are you reading from--

7 MR. HARRINGTON: 5.7.7 from Verizon's  
8 proposed language.

9 Is there any other place in the Verizon  
10 proposed language where it talks at all about the  
11 rates that would be charged for this traffic?

12 MR. PITTERLE: Yes, I believe there is.

13 MR. HARRINGTON: Could you show me where  
14 that is.

15 MR. PITTERLE: Turn to my page 31 of the  
16 JDPL, but it's paragraph 5.7.4.

17 MR. HARRINGTON: Yes.

18 MR. PITTERLE: That would be another  
19 section that I believe points to the sections of  
20 the contract of the--of the ISP order, excuse me,  
21 that you found the rates or caps.

22 MR. HARRINGTON: But that's all the

1 contract language does. It points to the FCC  
2 order?

3 MR. PITTERLE: Yes. In this section it  
4 points to the order, and in Verizon's view that is  
5 its position on what rates would be applicable to  
6 ISP-bound traffic.

7 MR. HARRINGTON: So, Verizon's position is  
8 that the rate should be the cap?

9 MR. PITTERLE: Verizon would exercise its  
10 right, as the ISP order says, in any state that has  
11 an order that sets something below the cap, Verizon  
12 would reserve its rights to select that rate versus  
13 the cap. If there is no such rate, Verizon has  
14 another choice: They could select the cap or they  
15 could refuse or not offer to exchange traffic that  
16 terminates on it under 251(b)(5) traffic at that  
17 same rate, and then they would pay a higher rate or  
18 maybe a lower rate, but it's the reciprocal  
19 compensation rate. It's Internet traffic.

20 MR. HARRINGTON: Let's talk about Virginia  
21 and this agreement for a moment.

22 In Virginia, we already established that

1 there is no lower rate charged under Virginia law;  
2 correct?

3 MR. PITTERLE: There is no ruling in  
4 Virginia that set a rate for Internet traffic in  
5 Virginia that I'm aware of.

6 MR. HARRINGTON: You're not aware of any  
7 such proceeding to set such a rate?

8 MR. PITTERLE: No, I'm not.

9 MR. HARRINGTON: Okay. So, we would be  
10 referring back to the FCC order which sets a cap  
11 and doesn't set a rate in Virginia right now.

12 And is it Verizon's position right now  
13 that in Virginia the rate would be the maximum  
14 under the cap? Assuming you elected to apply all  
15 these things which we will get to in a moment.

16 MR. PITTERLE: I'm going to answer that by  
17 saying the only options I'm aware of Verizon in  
18 that situation that Verizon has is to select the  
19 cap rate for traffic above three-to-one within  
20 Verizon's local calling area, or to--and in doing  
21 so it has to offer to exchange traffic that  
22 terminates on it at the same rate which I believe

1 Verizon has done May 14th. Or it could--and if it  
2 refuses to do that offer or to offer to exchange  
3 traffic, then it would be accepting, I guess, the  
4 reciprocal compensation rates to traffic above  
5 three.

6 Of those two choices, I believe the former  
7 choice is to take the cap. I'm not certain of  
8 that.

9 MR. HARRINGTON: Now, if you're incorrect  
10 that Verizon's only choice was to take them--the  
11 capped rate under the order, then you need to  
12 specify a rate in this contract or the parties  
13 would have to at some point negotiate a rate;  
14 correct?

15 MR. PITTERLE: Verizon has made the  
16 decision, which I said I believe it has, but I  
17 qualified I'm not certain, to use the cap. Then  
18 that is the rate that Verizon believes is in  
19 effect.

20 MR. HARRINGTON: Can you please direct him  
21 to actually answer the question I asked here. This  
22 is about the fourth time he's decided to go on some

1 other route.

2 MR. OATES: I object to that  
3 characterization of his testimony. I think  
4 Mr. Pitterle has answered the questions directly  
5 and honestly.

6 MR. HARRINGTON: Could I ask the question  
7 be read back and have him respond with a yes or no  
8 to it at least?

9 MR. DYGERT: All right, let's do that.

10 (Whereupon, the Court Reporter read back  
11 the previous question.)

12 MR. PITTERLE: I accept that with a yes.

13 MR. HARRINGTON: Thank you.

14 Moving on to the other topic, which is  
15 Verizon's election whether or not to use these  
16 rates, in fact, the contract language you're  
17 proposing constitutes that election as to Cox; is  
18 that right? You elected to take these rates by  
19 proposing the contract language, or represents your  
20 intent to take these rates.

21 MR. PITTERLE: It would seem to do that,  
22 yes.

1 MR. HARRINGTON: So, that's really not an  
2 issue here?

3 MR. PITTERLE: These rates being the  
4 current .0015 rate for traffic above three-to-one?  
5 Yes.

6 MR. HARRINGTON: Let's go back to the  
7 ISP-bound traffic order and look at paragraph 79.  
8 This is the paragraph that adopts the three-to-one  
9 ratio.

10 Is there anything in this paragraph that  
11 specifies how you calculate the three-to-one ratio,  
12 decide what traffic falls within traffic you would  
13 use for it and what traffic you would not use?

14 MR. PITTERLE: No.

15 MR. HARRINGTON: Is there somewhere else  
16 in the order that does, to your knowledge?

17 MR. PITTERLE: Not to my knowledge.

18 MR. HARRINGTON: Is it therefore a  
19 reasonable thing to do to include in your contract  
20 language that does explain how you will calculate  
21 the three-to-one ratio?

22 MR. PITTERLE: At some point I think



1 that's reasonable, and I would like to explain, if  
2 that's okay. I don't want to be accused of  
3 avoiding the answer on this one.

4 I think there is a time in a learning  
5 experience that's needed under this order to get  
6 those things done, and Verizon is willing, as I  
7 said in my--both parts of my testimony to sit down  
8 and negotiate detailed terms with the parties to  
9 help implement the order. That is in my testimony,  
10 and Verizon is willing to do that, and it's our  
11 requirement.

12 That said, we need to make sure that those  
13 terms do not go beyond the order, do not interpret  
14 the order, do not become paraphrases of the order.  
15 And with that in mind, Verizon just wants to be  
16 very careful we don't create a whole new set of  
17 dispute potential issues by rushing to language in  
18 the order immediately.

19 What I would suggest, which has been done  
20 before, is that parties work together at the  
21 business level to try to resolve these issues, and  
22 as agreements are reached that really pin these

1 areas down in more detail such as exactly what  
2 minutes are used to calculate the three-to-one  
3 ratio, that that can be brought into the contract,  
4 and Verizon is willing to bring that into the  
5 contract. We are not avoiding going any further in  
6 the contract with detail. It's not been the  
7 proposal per se, but those details need to be more  
8 readily resolved by the business parties. They can  
9 even be included in business rules, which is a very  
10 common practice in the industry in many areas to  
11 resolve issues like this. They don't have to be in  
12 the contract.

13 I would also like to state that the  
14 contract Verizon has with Cox may be viewed to be  
15 different from AT&T's perspective or something they  
16 want different. WorldCom may feel differently on  
17 the terms. We have hundreds of CLECs that we are  
18 dealing with, and we could end up with 50 or 60  
19 versions of this that we would suddenly have to  
20 implement either manually or within our business  
21 systems.

22 So, what we would want to do is to come in

1 with uniform, acceptable set of parameters on how  
2 to calculate these numbers--that is, as  
3 industry-wide as possible--to benefit both parties.

4 MR. HARRINGTON: You have not made such a  
5 proposal to Cox at this time, have you?

6 MR. PITTERLE: I believe that we are  
7 working at the business level with some of the  
8 carriers. Whether that includes Cox, I don't know.

9 MR. HARRINGTON: Have you made a proposal  
10 to AT&T and WorldCom?

11 MR. PITTERLE: I know we had discussions  
12 with AT&T and possibly WorldCom. I'm not involved  
13 in those on a day-to-day basis, so I can't say I  
14 have been personally involved, but I do know that  
15 the people that do that type of thing are in  
16 conversation with various CLECs on that issue.

17 MR. HARRINGTON: This order was issued  
18 April 27th. How long ago was that?

19 MR. OATES: Objection.

20 MR. HARRINGTON: I'm sorry, I will ask  
21 again.

22 It's been five months since the order was

1 issued. Isn't it surprising that you haven't  
2 gotten a proposal out to the CLEC community that  
3 presumably, including Cox, that they could look at  
4 in that time since the three-to-one ratio was  
5 effective as of the effective date the order?

6 MR. PITTERLE: First of all, the effective  
7 date of the order was June 14th, but it was issued  
8 April 27th. That is three and a half months of  
9 elapsed time, and I believe Verizon is trying to  
10 find ways. And as I said, I have been aware of  
11 discussion with CLECs to try to find ways to agree  
12 on various issues as to how to calculate  
13 three-to-one. But I'm not sure that those have all  
14 been resolved yet, and I'm not sure if it includes  
15 Cox.

16 MR. HARRINGTON: Let me ask this a little  
17 differently: You knew on April 27th what the order  
18 said. And as you point out, the order went in  
19 effect June 14th at which point the three-to-one  
20 ratio became an irrelevant point.

21 Isn't it unusual that you have been  
22 implementing the three-to-one ratio and have not

1 had any discussions with anyone about how it should  
2 be implemented.

3 MR. PITTERLE: I'm not sure whether we  
4 have or not.

5 MR. HARRINGTON: In connection with that,  
6 has Verizon unilaterally reduced the amounts it's  
7 paying to CLECs based upon the April 27th order,  
8 even when they have existing contracts that have  
9 not been replaced by new ones?

10 MR. PITTERLE: I'm sorry? Could you  
11 repeat that?

12 MR. HARRINGTON: Has Verizon reduced the  
13 rates that it's paying pays to CLECs for reciprocal  
14 compensation based on the April 27th order and its  
15 own interpretation of the three-to-one ratio/

16 MR. OATES: Could I ask for a  
17 clarification of the question? Was the question  
18 related to the CLECs that are involved in this  
19 proceeding?

20 MR. HARRINGTON: Particularly as to Cox I  
21 could ask that question, if you would like.

22 I could start again--

1 MR. PITTERLE: I need to understand that  
2 question a little better when you say "reduced its  
3 rate."

4 MR. HARRINGTON: Since the effective date  
5 of this order, has Verizon taken any action as to  
6 Cox or any other CLEC in Virginia in which it has,  
7 without consultation with the CLEC, reduced amounts  
8 that was paying for reciprocal compensation, based  
9 upon the April 27th order?

10 MR. OATES: I will object to the question  
11 on the grounds of relevance. First, whatever  
12 Verizon has done with other CLECs in Virginia would  
13 not be relevant to this proceeding.

14 Second of all, the purpose of this  
15 proceeding is to derive language for a contract  
16 going forward. If Mr. Harrington or his client has  
17 a dispute about something that has occurred prior  
18 to this date, that's resolvable under the old  
19 contract, under whatever the appropriate dispute  
20 resolution procedure is.

21 MR. HARRINGTON: The relevance is that to  
22 the extent that Verizon has internally come up with

1 a way of calculating whether you have reached the  
2 three-to-one ratio and growth caps and all those  
3 things and not shared it with any other party,  
4 demonstrates they were able to coming up with  
5 something but they have not chosen to tell anyone  
6 about it.

7 MS. PREISS: I think it's relevant. The  
8 witness could answer the question.

9 MR. PITTERLE: As I already testified, I'm  
10 not sure what communication between the companies  
11 has been precisely taking place on detailed issues.  
12 If there hasn't been a communication with a  
13 certainly CLEC, I think what I also said and  
14 testified to, Verizon is willing to meet with those  
15 parties.

16 MS. PREISS: Could we get an answer to the  
17 question I think was asked. Since April 27th, has  
18 Verizon--and I will ask the question with respect  
19 to Cox first--reduced its compensation payments to  
20 Cox to reflect the three-to-one ratio adopted in  
21 the Commission's order?

22 MR. PITTERLE: I'm not certain if it has

1 or not.

2 MS. PREISS: That would be under Cox's  
3 existing agreement with Verizon, not the one that's  
4 being arbitrated here. You don't know whether or  
5 not Verizon has reduced the rate of payment for  
6 intercarrier compensation for ISP-bound traffic?

7 MR. PITTERLE: No, I do not.

8 MS. PREISS: Do you know the answer with  
9 respect to AT&T or WorldCom?

10 MR. PITTERLE: No. I haven't gotten into  
11 any of the specifics of what we are doing directly  
12 with carriers on an individual carrier basis, but  
13 as a general we are talking to carriers is my  
14 impression in the visit ahead with one of our staff  
15 people.

16 MS. PREISS: Do you know if it's Verizon's  
17 policy to reduce payments to carriers under  
18 existing contracts to reflect the three-to-one  
19 ratio in Virginia to reflect the three-to-one ratio  
20 in the ISP order?

21 MR. PITTERLE: It's an issue of  
22 interpretation of existing contracts, I would



1 imagine, but I'm not directly familiar with whether  
2 it has been or not.

3 MS. FARROBA: So, you don't know whether  
4 any of the compensation has been changed, whether  
5 Verizon has changed any compensation rates after  
6 the date of the Remand Order?

7 MR. PITTERLE: I don't know for sure. It  
8 may have, it may not have. I don't know.

9 MS. PREISS: Could we ask Verizon to  
10 provide that information to us, please.

11 RECORD REQUEST

12 MR. OATES: With respect to the parties in  
13 this proceeding?

14 MS. PREISS: Yes, please, and any other  
15 CLEC in Virginia.

16 It seems to me it goes to--what we are  
17 trying to do here is implement--issue I-5 has to do  
18 with implementing the Commission's ISP Remand  
19 Order. If Verizon has taken actions to implement  
20 that order in Virginia, pursuant to its contractual  
21 relations with CLECs, I think that's relevant to  
22 this issue.

1 MR. OATES: We will certainly look into  
2 that.

3 MR. HARRINGTON: Going back to the order,  
4 are you aware of any provision of the order that  
5 addresses whether the compensation should be the  
6 same for tandem and end-office interconnection?

7 MR. PITTERLE: To be honest, I'm not sure  
8 where the order goes on that issue. It's not an  
9 issue I focused on personally.

10 MR. HARRINGTON: Do you believe that would  
11 be relevant to figuring out what the parties should  
12 be paying each other?

13 MR. OATES: I would object to the  
14 question, that we served or we had a witness here  
15 yesterday on the question of end office versus  
16 tandem rates, indicated that was Mr. D'Amico who  
17 was the subject matter expert in that particular  
18 area.

19 MR. HARRINGTON: I think this is clearly  
20 relevant to this particular topic and is not end  
21 office, whether the appropriateness--it's not about  
22 the appropriateness of a particular choice. It's

1 about whether you should make a choice.

2 MS. PREISS: I think this question doesn't  
3 go to rule 51.7.11.8.3 or whatever that rule was  
4 that Mr. D'Amico was testifying about yesterday. I  
5 think this has to do with the applicability of the  
6 rates in the ISP order, which are different from  
7 reciprocal compensation rates under 251(b)(5). I  
8 don't know if the witness can answer the question,  
9 but he should if he's able.

10 MR. PITTERLE: The way I would answer it  
11 is to say if we are dealing with the Internet-bound  
12 traffic, the ISP compensation rates, assuming  
13 they're .0015, that is a rate that does not reflect  
14 in tandem or end office. It's consistent or  
15 uniform, no matter where the traffic is handed off.

16 MR. HARRINGTON: And Verizon would be  
17 comfortable with contract language to that effect?

18 MR. PITTERLE: When you say "to that  
19 effect," could you describe what--

20 MR. HARRINGTON: Contract language  
21 consistent with your answer to the previous  
22 question.

1 MR. PITTERLE: I'm a negotiator, so I  
2 don't quickly agree to language changes in the  
3 contract without knowing what the specific language  
4 is, and I apologize for that type of approach, but  
5 it's a natural tendency when you say "to that  
6 effect."

7 MR. HARRINGTON: But you just testified  
8 that it's Verizon's opinion that there was no  
9 distinction between tandem and-end office  
10 interconnection for the purpose of setting this  
11 compensation; correct?

12 MR. PITTERLE: I believe that's an  
13 interpretation of the order for myself, personally,  
14 yes.

15 MR. HARRINGTON: Personally or as a  
16 representative of Verizon?

17 MR. PITTERLE: As a representative of  
18 Verizon.

19 MR. HARRINGTON: To that extent, Verizon  
20 would be comfortable with the language that  
21 indicated the rate would be the same, regardless of  
22 whether it would be the tandem or end-office

1 interconnection?

2 MR. PITTERLE: We would be willing to  
3 discuss that, yes.

4 MR. HARRINGTON: I would like to move on  
5 to the use of the term "information access," which  
6 was discussed previously during the petitioner's  
7 panel.

8 Can you explain to me what Verizon's  
9 position is on what traffic is included within the  
10 term "information access" for the purpose of this  
11 contract?

12 MR. PITTERLE: My primary definition of  
13 information access traffic is traffic under  
14 251(g), as the ISP order indicates, and it would be  
15 traffic related to ISP providers.

16 MR. HARRINGTON: Recognizing that I'm not  
17 asking you to give legal opinions here, is it your  
18 view that the only traffic that falls under 251(g)  
19 is the traffic that was described in the April 27th  
20 order, or is there other traffic that falls under  
21 251(g)?

22 MR. PITTERLE: My belief is that it is

1 traffic that goes to Internet Service Providers.

2 MR. HARRINGTON: Now, going back to the  
3 earlier testimony, are you saying, then, that to  
4 pick the example used at the time, time and  
5 temperature numbers would not fall within  
6 information access, or calls to those numbers would  
7 not fall within that information access?

8 MR. PITTERLE: My distinction is that  
9 information access is data type traffic,  
10 information service providers; and information  
11 services is more the time and temperature type  
12 service, which is separate.

13 MR. HARRINGTON: I'm going to read to you  
14 the definition of information service from the  
15 Communications Act. It will take me a moment to  
16 find it. This is for reference Section 320 of the  
17 Communications Act. The term--I will bring it over  
18 to you so you could read it in a moment. Term  
19 information service means the offering of a  
20 capability for generating, acquiring, storing,  
21 transforming, processing, retrieving, utilizing, or  
22 making available information via

1 telecommunications, and includes electronic  
2 publishing, but does not include any use of any  
3 such capability for the management, control, or  
4 operation of a telecommunications system or the  
5 management of a telecommunications service.

6 And it's coming over to you right now.

7 MR. OATES: Could you give us the cite  
8 again.

9 MR. HARRINGTON: Section 3 of the  
10 Communications Act, 320. That would be 47 USC 153  
11 (20).

12 And the copy that's being brought over to  
13 you is marked with a pink tab. There are other  
14 tabs in the book that are not relevant.

15 Let me know when you have finished reading  
16 it.

17 (Pause.)

18 MR. PITTERLE: I finished.

19 MR. HARRINGTON: Is that definition  
20 limited to Internet Service Providers?

21 MR. PITTERLE: It does not state "Internet  
22 Service Providers," no.

1 MR. HARRINGTON: Would voicemail fall  
2 within that service definition?

3 MR. PITTERLE: I wouldn't be certain,  
4 based on these types of words. Certainly the  
5 possibility exists, yes.

6 MR. HARRINGTON: Would a service offered  
7 by a newspaper where you can call and get sports  
8 scores fall within this definition?

9 MR. OATES: I object. I think the witness  
10 testified he's not comfortable with interpreting  
11 this provision of the Act. It's calling for a  
12 legal opinion anyway.

13 MR. HARRINGTON: If the witness is willing  
14 to say he's not competent to figure out what is an  
15 information service, I will stop here.

16 MR. PITTERLE: I'm not that familiar with  
17 information services, so I would say that that  
18 would be a great idea.

19 MR. HARRINGTON: I will stop here on that,  
20 then. I'm sorry, not on everything, however.

21 You also testified during your earlier  
22 cross-examination that the phrase "customer ISP"



1 which was used in the definition of measured  
2 Internet traffic, you felt that the term "cut ISP"  
3 was, in fact, the only term that mattered that any  
4 customer under that provision would be also an ISP?  
5 This is referring to traffic that terminated a  
6 customer ISP. If you would like to look at  
7 definition again, please feel free.

8 MR. PITTERLE: That definition is where  
9 again?

10 MR. HARRINGTON: It's your definition of  
11 measured Internet traffic, which is, I believe, the  
12 same for all the parties. If you want to look at  
13 it in the Cox language, it will be somewhere around  
14 page 30. I'm sorry, it will be earlier.

15 MS. PREISS: Page 32 of the JDPL? 42, I'm  
16 sorry.

17 MR. HARRINGTON: 42.

18 MR. DYGERT: How much more do you think  
19 you have for this witness?

20 MR. HARRINGTON: If we are just  
21 restricting it to I-5, I will have one other topic  
22 after this, which I hope will not take too long.

1 MR. DYGERT: Should we plan on getting  
2 through that before lunch?

3 MR. HARRINGTON: I think so.

4 MR. PITTERLE: I'm looking at the Cox  
5 language?

6 MR. HARRINGTON: Cox language.

7 MR. PITTERLE: I can't find it under that  
8 page number.

9 MR. HARRINGTON: I believe it's 1.41(A).  
10 I will read it to you, in relevant part.

11 (Reading) Measured Internet traffic means  
12 dialup switched Internet traffic originated by a  
13 customer of one party on that party's network at a  
14 point in a Verizon local calling area and delivered  
15 to a customer or an Internet Service Provider  
16 served by the other party on that other party's  
17 network at a point in the same Verizon local  
18 calling area.

19 I would like you to focus on the phrase  
20 "delivered to a customer or Internet Service  
21 Provider."

22 MR. PITTERLE: I have. I was asked that

1 question previously, and my answer was that I view  
2 those as one and the same.

3 MR. HARRINGTON: So, you would you object  
4 to removing the phrase "customer or" from that  
5 language, then?

6 MR. PITTERLE: At this point I'm not  
7 opposed to it, to that concept.

8 MR. HARRINGTON: Okay.

9 I would like to move on to the  
10 change-of-law provision issue.

11 MR. PITTERLE: If I could on that answer,  
12 though, state that--that is part of what I would  
13 determine to be negotiations that we--I said we  
14 were willing to do. I would cast it in that light.

15 MR. HARRINGTON: You're not the negotiator  
16 with Cox on this issue, are you?

17 MR. PITTERLE: No, I'm not, but I have the  
18 negotiator for Cox that works for me.

19 MR. HARRINGTON: Let's move on to the  
20 change-of-law provision.

21 In Verizon Exhibit 19, which is your  
22 rebuttal testimony a,t the bottom of page eight--

1 MR. PITTERLE: Rebuttal testimony?

2 MR. HARRINGTON: Yes. The pages are not  
3 numbered on my copy.

4 MR. PITTERLE: Bottom of page eight?

5 MR. HARRINGTON: Yes.

6 MR. PITTERLE: The last question?

7 MR. HARRINGTON: Right. You describe  
8 Verizon's objections to WorldCom's change-of-law  
9 provision. Do you find that?

10 MR. PITTERLE: Yes.

11 MR. HARRINGTON: I believe it's the next  
12 page of your testimony, but you say that Verizon  
13 has the same objections generally to Cox's language  
14 as it does to AT&T's and WorldCom's.

15 Do you have the same objections to Cox's  
16 change-of-law provision that you have to  
17 WorldCom's?

18 MR. PITTERLE: I would need to reference  
19 back to the Cox change-of-law language, if I could.

20 MR. HARRINGTON: JDPL, page 36 in mine.  
21 It's the language entitled "Scope" on that page.  
22 It begins, "Upon the occurrence of any one of the

1 following conditions."

2 MR. PITTERLE: I have it.

3 MR. HARRINGTON: Are your objections to  
4 that language the same as your objections to  
5 WorldCom's?

6 MR. OATES: What is the cite to the  
7 language? I'm sorry.

8 MR. HARRINGTON: Section 5.7.7.1.C.

9 MR. OATES: Thank you.

10 MR. PITTERLE: I'm going to go to a more  
11 flowing Cox language which you submitted on the  
12 18th.

13 MR. HARRINGTON: The language is going to  
14 be the same.

15 MR. PITTERLE: But this was chopped up.  
16 It's hard to--

17 MR. HARRINGTON: That's fine. Just let me  
18 know when you had a chance to review it so you  
19 could tell me.

20 MR. PITTERLE: Okay.

21 It looks primarily this section is a  
22 reservation-of-rights section by Cox.

1 MR. HARRINGTON: Really for both parties.

2 MR. PITTERLE: Okay.

3 MR. HARRINGTON: Does that mean your  
4 objections are the same as or in some way different  
5 from your objections to WorldCom's language?

6 MR. PITTERLE: This looks like this  
7 language is somewhat different than the other  
8 parties', and I wouldn't say outright we have no  
9 problem with it. It's--it looks to be different,  
10 and looks to be a little bit more balanced.

11 MR. HARRINGTON: Now, given the history of  
12 this issue, generally, don't you think it's prudent  
13 to have a specific change-of-law provision  
14 governing it?

15 MR. PITTERLE: I think it's somewhat of a  
16 legal question when we get into the change of law  
17 and what change-of-law provisions are needed or not  
18 needed.

19 I would state that the--there is another  
20 section that I believe in this overall contract  
21 proposal that has change-of-law language in it  
22 that's more boilerplate.

1 MR. HARRINGTON: Let's look at that  
2 section. You should have it in front of you. It's  
3 Section 27.3 in the materials that were handed out  
4 a little while ago.

5 And again, the regular text represents  
6 agreed-to language between the parties, although  
7 this is taken from the Cox version of the  
8 agreement.

9 Now, as you interpret this provision as  
10 Verizon interprets this provision, would it allow  
11 Cox to renegotiate the provisions governing  
12 ISP-bound traffic if the Court of Appeals  
13 overturned the April 27th order?

14 MR. PITTERLE: I haven't had a chance to  
15 read it. Should I be reading 27-3 and 27-4, both?

16 MR. HARRINGTON: I believe it's just 27-3.

17 MR. PITTERLE: Thank you.

18 (Pause.)

19 MR. PITTERLE: Okay. I read it. Now--

20 MR. HARRINGTON: I will ask the question  
21 again. You're not likely to remember it after a  
22 while.

1 MR. PITTERLE: I can lose it.

2 MR. HARRINGTON: As you interpret this  
3 provision, as Verizon interprets this, would it  
4 allow Cox to renegotiate the provisions governing  
5 ISP-bound traffic if the Court of Appeals  
6 overturned the April 27th order?

7 MR. PITTERLE: I would interpret it to  
8 mean that--and this is--I'm not an attorney, so I  
9 think an interpretation is nonlegal, but it would  
10 seem that applicable law is the key here. And if  
11 the order has an effective date, some subsequent  
12 reversal order, I think--I assume you're referring  
13 to, that effective date would be, under applicable  
14 law, would take place. It would be the effective  
15 date of any change, but then the parties would have  
16 certain amount of time to make the change in an  
17 amendment form to a contract to put that language  
18 into the contract.

19 MR. HARRINGTON: Let's assume for the  
20 moment, without your agreeing to this or your  
21 counsel agreeing to it, that the April 27th order  
22 constitutes applicable law. If it were overturned,



1 would the renegotiation provision of this section  
2 be triggered, in Verizon's view?

3 MR. PITTERLE: I think in the testimony,  
4 and as I stated, that if there is a change in law,  
5 there is a reversal or a court decision or some  
6 other, I don't know what else, remand that would  
7 occur that would change the terms of the FCC order,  
8 under that order Verizon is willing to apply it  
9 under the applicable law which would be the terms  
10 of that order.

11 Some of the other petitioners have talked  
12 about an automatic retroactive true-up to the  
13 effective date of the contract or the order of the  
14 FCC, and that certainly--if the order stated that,  
15 then that would be applicable law. But if the  
16 order did not state that, that goes beyond  
17 applicable law.

18 MR. HARRINGTON: That language is not in  
19 the Cox change-of-law provision?

20 MR. PITTERLE: It is not.

21 MR. HARRINGTON: In light of what you just  
22 said, would you be comfortable with an order in